

I certify that the attached is a true and
correct copy of KB # 1789, which
1987 MAR 19 PM 3:49 was filed of record on MAR 12 1987
HOUSE OF REPRESENTATIVES
and referred to the committee on:
Natural Resources

Boaty Murray
Chief Clerk of the House

FILED MAR 12 1987

By *Charles J. Harris*

H. B. No. 1789

A BILL TO BE ENTITLED

AN ACT

relating to the cancellation of water rights permits, certified
filings, and certificates of adjudication.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.171, Water Code, is amended by adding
Subdivision (4) to read as follows:

(4) "Permit" means a right issued by the commission to
use water.

SECTION 2. Sections 11.172 through 11.179, Water Code, are
amended to read as follows:

Sec. 11.172. GENERAL PRINCIPLE. A permit, certified filing,
or certificate of adjudication is subject to cancellation in whole
or part for five [10] years nonuse as provided by this subchapter.

Sec. 11.173. CANCELLATION IN WHOLE. (a) Except as provided
by Subsections [Subsection] (b) and (c) of this section, if no part
of the water authorized to be appropriated under a permit,
certified filing, or certificate of adjudication has been put to
beneficial use at any time during the five-year [10-year] period
immediately preceding the cancellation proceedings authorized by
this subchapter, then the appropriation is presumed to have been
wilfully abandoned, and the permit, certified filing, or
certificate of adjudication is subject to cancellation in whole as
provided by this subchapter.

(b) A permit, certified filing, or certificate of

1 adjudication is exempt from cancellation under Subsection (a) of
2 this section to the extent of the owner's participation in the
3 Conservation Reserve Program authorized by the Food Security Act,
4 Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514
5 (1985).

6 (c) Permits and certificates of adjudication that include
7 conditions for the commencement and completion of construction are
8 exempt from the requirement of Subsection (a) of this section until
9 not later than the fifth year after construction is authorized by
10 the permit or the certificate of adjudication is complete. This
11 subsection does not exempt a permit from cancellation under Section
12 11.146 of this code.

13 Sec. 11.174. COMMISSION TO INITIATE PROCEEDINGS. Except as
14 provided by Subsections (b) and (c), Section 11.173, of this code,
15 if [When] the commission finds that its records do not show that
16 any water has been beneficially used under a permit, certified
17 filing, or certificate of adjudication during the past five [10]
18 years, the executive director shall initiate proceedings,
19 terminated by public hearing, to cancel the permit, certified
20 filing, or certificate of adjudication.

21 Sec. 11.175. NOTICE. (a) At least 30 days before the date
22 of the hearing, the commission shall send notice of the hearing to
23 the holder of the permit, certified filing, or certificate of
24 adjudication being considered for cancellation. Notice shall be
25 sent by certified mail, return receipt requested, to the last
26 address shown by the records of the commission. [~~The commission~~
27 ~~shall also send notice by regular mail to all other holders of~~

1 permits,--certified--filings,--certificates--of--adjudication,--and
2 claims-of-water-rights-pursuant-to-Section-11.303-of-this--code--in
3 the-same-watershed-]

4 (b) The commission shall also have the notice of the hearing
5 published at least one time [~~once--a--week-for-two-consecutive~~
6 ~~weeks,~~] at least 30 days before the date of the hearing, in a
7 newspaper published in each county in which diversion of water from
8 the source of supply was authorized or proposed to be made and in
9 each county in which the water was authorized or proposed to be
10 used, as shown by the records of the commission. If in any such
11 county no newspaper is published, then the notice may be published
12 in a newspaper having general circulation in the county.

13 Sec. 11.176. HEARING. The commission shall hold a hearing
14 and shall give the holder of the permit, certified filing, or
15 certificate of adjudication and other interested persons an
16 opportunity to be heard and to present evidence that water has, or
17 has not, been beneficially used for the purposes authorized by the
18 permit, certified filing, or certificate of adjudication during the
19 five-year [~~10-year~~] period.

20 Sec. 11.177. COMMISSION FINDING; ACTION. At the conclusion
21 of the hearing if the commission finds that no water has been
22 beneficially used for authorized purposes during the five-year
23 [~~10-year~~] period, the appropriation is deemed to have been wilfully
24 abandoned, of no further force and effect, and the commission shall
25 cancel the permit, certified filing, or certificate of
26 adjudication.

27 Sec. 11.178. CANCELLATION IN PART. (a) Except as provided

1 by Subsection (b) of this section, if some part of the water
2 authorized to be appropriated under a permit, certified filing, or
3 certificate of adjudication has not been put to beneficial use at
4 any time during the five-year [~~10-year~~] period immediately
5 preceding the cancellation proceedings authorized by this
6 subchapter, then the permit, certified filing, or certificate of
7 adjudication is subject to partial cancellation, as provided by
8 this subchapter, to the extent of the five [~~10~~] years nonuse.

9 (b) A permit, certified filing, or certificate of
10 adjudication or a portion of a permit, certified filing, or
11 certificate of adjudication is exempt from cancellation under
12 Subsection (a) of this section to the extent of the owner's
13 participation in the Conservation Reserve Program authorized by the
14 Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat.
15 1354, 1509-1514 (1985).

16 Sec. 11.179. COMMISSION MAY INITIATE PROCEEDINGS. When the
17 commission finds that its records do not show proof that some
18 portion of the water has been used during the past five [~~10~~] years,
19 the executive director may initiate proceedings, terminated by
20 public hearing, to cancel the permit, certified filing, or
21 certificate of adjudication in part.

22 SECTION 3. Subsection (a), Section 11.182, Water Code, is
23 amended to read as follows:

24 (a) At the conclusion of the hearing, the commission shall
25 cancel the permit, certified filing, or certificate of adjudication
26 to the extent that it finds that:

27 (1) any portion of the water appropriated under the

1 permit, certified filing, or certificate of adjudication has not
2 been put to an authorized beneficial use during the five-year
3 ~~[10-year]~~ period;

4 (2) the holder has not used reasonable diligence in
5 applying the unused portion of the water to an authorized
6 beneficial use; and

7 (3) the holder has not been justified in the nonuse or
8 does not then have a bona fide intention of putting the unused
9 water to an authorized beneficial use within a reasonable time
10 after the hearing.

11 SECTION 4. Section 11.184, Water Code, is amended to read as
12 follows:

13 Sec. 11.184. MUNICIPAL OR INDUSTRIAL PERMIT OR CERTIFICATE
14 OF ADJUDICATION AND CERTIFIED FILING. Regardless of other
15 provisions of this subchapter, all permits, certified filings, and
16 certificates of adjudication ~~[no-portion-of-a-certified-filing-held~~
17 ~~by-a-city,-town,-village,-or-municipal-water-district,-]~~ authorizing
18 the storage and use of water for municipal or industrial purposes
19 are exempt from cancellation to the extent that the water supply
20 has been developed and can be expected to be beneficially used when
21 reasonable projections based on accepted methods are employed
22 ~~[shall-be-cancelled--if--water--has--been--put--to--use--under--the~~
23 ~~certified--filing--for--municipal--purposes--at-any-time-during-the~~
24 ~~10-year---period---immediately---preceding---the---institution---of~~
25 ~~cancellation-proceedings]~~.

26 SECTION 5. This Act takes effect September 1, 1987.

27 SECTION 6. The importance of this legislation and the

1 crowded condition of the calendars in both houses create an
2 emergency and an imperative public necessity that the
3 constitutional rule requiring bills to be read on three several
4 days in each house be suspended, and this rule is hereby suspended.

HOUSE COMMITTEE REPORT

1987 MAY -4 PM 1:15

HOUSE OF REPRESENTATIVES

1st Printing

By Craddick, et al.

H.B. No. 1789

Substitute the following for H.B. No. 1789:

By Harris of Brazoria

C.S.H.B. No. 1789

A BILL TO BE ENTITLED

AN ACT

relating to the cancellation of water rights permits, certified filings, and certificates of adjudication; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 11, Water Code, is amended to read as follows:

SUBCHAPTER E. CANCELLATION OF PERMITS, CERTIFIED FILINGS, AND
CERTIFICATES OF ADJUDICATION FOR NONUSE

Sec. 11.171. DEFINITIONS. As used in this subchapter:

(1) "Other interested person" means any person other than a record holder who is interested in the permit or certified filing or any person whose direct interest would be served by the cancellation of the permit or certified filing in whole or part.

(2) "Certified filing" means a declaration of appropriation or affidavit that was filed with the State Board of Water Engineers under the provisions of Section 14, Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended.

(3) "Certificate of adjudication" means a certificate issued by the commission under Section 11.323 of this code.

(4) "Permit" means a right issued by the commission to use water.

Sec. 11.172. GENERAL PRINCIPLE. A permit, certified filing, or certificate of adjudication is subject to cancellation in whole

1 or part for five [~~10~~] years nonuse as provided by this subchapter.

2 Sec. 11.173. CANCELLATION IN WHOLE OR IN PART. (a) Except
3 as provided by Subsections [~~Subsection~~] (b) and (c) of this
4 section, if [~~no~~] part or all of the water authorized to be
5 appropriated under a permit, certified filing, or certificate of
6 adjudication has not been put to beneficial use at any time during
7 the five-year [~~10-year~~] period immediately preceding the
8 cancellation proceedings authorized by this subchapter, then the
9 appropriation is presumed to have been wilfully abandoned to the
10 extent of nonuse during the five-year period, and the permit,
11 certified filing, or certificate of adjudication is subject to
12 cancellation in whole or in part as provided by this subchapter.

13 (b) A permit, certified filing, or certificate of
14 adjudication is exempt from cancellation under Subsection (a) of
15 this section to the extent of the owner's participation in the
16 Conservation Reserve Program authorized by the Food Security Act,
17 Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514
18 (1985).

19 (c) Permits and certificates of adjudication that include
20 conditions for the commencement and completion of construction are
21 exempt from the requirement of Subsection (a) of this section until
22 not later than the fifth year after construction as authorized by
23 the permit or the certificate of adjudication is complete. This
24 subsection does not exempt a permit from cancellation under Section
25 11.146 of this code.

26 Sec. 11.174. COMMISSION TO INITIATE PROCEEDINGS. Except as
27 provided by Subsections (b) and (c), Section 11.173, of this code,

1 if [~~When~~] the commission finds that its records do not show that
 2 all of the [~~any~~] water has been beneficially used under a permit,
 3 certified filing, or certificate of adjudication during the past
 4 five [~~10~~] years, the executive director may [~~shall~~] initiate
 5 proceedings, including a [~~terminated-by~~] public hearing, to cancel
 6 the permit, certified filing, or certificate of adjudication in
 7 whole or in part to the extent of the five years nonuse.

8 Sec. 11.175. NOTICE. (a) At least 30 days before the date
 9 of the hearing, the commission shall send notice of the hearing to
 10 the holder of the permit, certified filing, or certificate of
 11 adjudication being considered for total or partial cancellation.
 12 Notice shall be sent by certified mail, return receipt requested,
 13 to the last address shown by the records of the commission. [~~The~~
 14 ~~commission--shall--also--send--notice--by--regular--mail--to--all--other~~
 15 ~~holders---of---permits,---certified---filings,---certificates---of~~
 16 ~~adjudication,--and--claims--of--water--rights--pursuant--to--Section--11--303~~
 17 ~~of--this--code--in--the--same--watershed--]~~

18 (b) The commission shall also have the notice of the hearing
 19 published at least one time [~~once--a--week--for--two--consecutive~~
 20 ~~weeks,~~] at least 30 days before the date of the hearing, in a
 21 newspaper published in each county in which diversion of water from
 22 the source of supply was authorized or proposed to be made and in
 23 each county in which the water was authorized or proposed to be
 24 used, as shown by the records of the commission. If in any such
 25 county no newspaper is published, then the notice may be published
 26 in a newspaper having general circulation in the county.

27 Sec. 11.176. HEARING. The commission shall hold a hearing

1 and shall give the holder of the permit, certified filing, or
2 certificate of adjudication and other interested persons an
3 opportunity to be heard and to present evidence that water has, or
4 has not, been beneficially used for the purposes authorized by the
5 permit, certified filing, or certificate of adjudication during the
6 five-year [10-year] period.

7 Sec. 11.177. [COMMISSION-FINDING-ACTION--At-the-conclusion
8 of-the-hearing-if-the-commission--finds--that--no--water--has--been
9 beneficially--used--for--authorized--purposes--during--the--10-year
10 period,--the--appropriation--is--deemed--to--have--been--wilfully
11 abandoned,--of-no-further-force-and-effect,--and-the-commission-shall
12 cancel---the---permit,---certified---filing,---or---certificate--of
13 adjudication.

14 [Sec. 11.178. --CANCELLATION-IN-PART-- (a)--Except-as-provided
15 by-Subsection-(b)-of-this--section,--if--some--part--of--the--water
16 authorized--to-be-appropriated-under-a-permit,--certified-filing,--or
17 certificate-of-adjudication-has-not-been-put-to-beneficial--use--at
18 any--time--during--the--10-year--period--immediately--preceding-the
19 cancellation-proceedings-authorized-by-this--subchapter,--then--the
20 permit,--certified-filing,--or-certificate-of-adjudication-is-subject
21 to--partial--cancellation,--as--provided-by-this-subchapter,--to-the
22 extent-of-the-10-years-nonuse.

23 [(b)--A--permit,---certified---filing,---or---certificate---of
24 adjudication--or--a--portion--of--a--permit,--certified--filing,--or
25 certificate-of--adjudication--is--exempt--from--cancellation--under
26 Subsection--(a)--of--this--section--to--the--extent--of--the-owner's
27 participation-in-the-Conservation-Reserve-Program-authorized-by-the

1 Food-Security-Act,--Pub. L. --No. --99-198,--Secs. --1231-1236,--99--Stat.
2 1354,--1509-1514--(1985)--

3 [See. --11-179,--COMMISSION-MAY-INITIATE-PROCEEDINGS,--When the
4 commission--finds--that--its--records--do--not--show--proof--that--some
5 portion--of--the--water--has--been--used--during--the--past--10--years,--the
6 executive--director--may--initiate--proceedings,--terminated--by--public
7 hearing,--to--cancel--the--permit,--certified--filing,--or--certificate--of
8 adjudication--in--part.

9 [See. --11-180,--NOTICE,---The--commission--shall--give--notice--of
10 the--hearing--as--provided--by--Section--11-175--of--this--code.

11 [See. --11-181,--HEARING,--The--commission--shall--hold--a--hearing
12 and--shall--give--the--holder--of--the--permit,--certified--filing,--or
13 certificate--of--adjudication--and--other--interested--persons---an
14 opportunity--to--be--heard--and--to--present--evidence--on--any--matter
15 pertinent--to--the--questions--at--issue.

16 [See. --11-182,] COMMISSION FINDING; ACTION. (a) At the
17 conclusion of the hearing, the commission shall cancel the permit,
18 certified filing, or certificate of adjudication to the extent that
19 it finds that:

20 (1) any portion of the water appropriated under the
21 permit, certified filing, or certificate of adjudication has not
22 been put to an authorized beneficial use during the five-year
23 [10-year] period;

24 (2) the holder has not used reasonable diligence in
25 applying the unused portion of the water to an authorized
26 beneficial use; and

27 (3) the holder has not been justified in the nonuse or

1 does not then have a bona fide intention of putting the unused
2 water to an authorized beneficial use within a reasonable time
3 after the hearing.

4 (b) In determining what constitutes a reasonable time as
5 used in Subsection (a)(3) of this section, the commission shall
6 give consideration to:

7 (1) the expenditures made or obligations incurred by
8 the holder in connection with the permit, certified filing, or
9 certificate of adjudication;

10 (2) the purpose to which the water is to be applied;

11 (3) the priority of the purpose; and

12 (4) the amount of time usually necessary to put water
13 to a beneficial use for the same purpose when diligently developed.

14 Sec. 11.178 [~~11-183~~]. RESERVOIR. If the holder of a permit,
15 certified filing, or certificate of adjudication has facilities for
16 the storage of water in a reservoir, the commission may allow him
17 to retain the impoundment to the extent of the conservation storage
18 capacity of the reservoir for domestic, livestock, or recreation
19 purposes.

20 Sec. 11.179 [~~11-184~~]. MUNICIPAL OR INDUSTRIAL PERMIT OR
21 CERTIFICATE OF ADJUDICATION AND CERTIFIED FILING. Regardless of
22 other provisions of this subchapter, all permits, certified
23 filings, and certificates of adjudication [~~no--portion--of--a~~
24 ~~certified--filing-held-by-a-city,-town,-village,-or-municipal-water~~
25 ~~district,~~] authorizing the storage and use of water for municipal
26 or industrial purposes are exempt from cancellation to the extent
27 that the water supply has been developed and can be expected to be

1 beneficially used within a reasonable time when projections based
2 on accepted methods are employed~~[;--shall-be-cancelled-if-water--has~~
3 ~~been--put--to-use-under-the-certified-filing-for-municipal-purposes~~
4 ~~at-any-time-during-the-10-year--period--immediately--preceeding--the~~
5 ~~institution-of-cancellation-proceedings]~~.

6 Sec. 11.180 ~~[11.185]~~. EFFECT OF INACTION. Failure to
7 initiate cancellation proceedings under this subchapter does not
8 validate or improve the status of any permit, certified filing, or
9 certificate of adjudication in whole or in part.

10 Sec. 11.181 ~~[11.186]~~. SUBSEQUENT PROCEEDINGS ON SAME WATER
11 RIGHT. Once cancellation proceedings have been initiated against a
12 particular permit, certified filing, or certificate of adjudication
13 and a hearing has been held, further cancellation proceedings shall
14 not be initiated against the same permit, certified filing, or
15 certificate of adjudication within the five-year period immediately
16 following the date of the hearing.

17 [Sections 11.182 ~~[11.187]~~ to 11.200 reserved for expansion]

18 SECTION 2. Chapter 11, Water Code, is amended by adding
19 Section 11.0821 to read as follows:

20 Sec. 11.0821. ADMINISTRATIVE PENALTY. (a) If a person
21 violates this chapter or a rule or order adopted or a permit or
22 certificate of adjudication issued under this chapter, the
23 commission may assess a civil penalty against that person as
24 provided by this section.

25 (b) A person who fails to file an annual report, as required
26 by Section 11.031 of this code, is subject to a civil penalty of
27 \$50 plus \$25 a month for each succeeding full month the report is

1 delinquent after March 1. The maximum penalty under this
2 subsection is \$200.

3 (c) A person who violates a provision of this chapter other
4 than Section 11.031 of this code, or who violates a rule, order, or
5 provision of a certified filing, permit, or certificate of
6 adjudication is subject to a civil penalty in an amount not to
7 exceed \$5,000 a day. Each day a violation continues may be
8 considered a separate violation for purposes of penalty assessment.

9 (d) In determining the amount of the civil penalty, the
10 commission shall consider:

11 (1) the nature, circumstances, extent, duration, and
12 gravity of the prohibited acts with special emphasis on the
13 potential impact of the violation on the stream and on the health,
14 welfare, and safety of the general public, as well as of persons
15 with a right to use water from the stream;

16 (2) with respect to the alleged violator:

17 (A) the history and extent of previous
18 violations;

19 (B) the degree of culpability including whether
20 the violation could have been reasonably avoided;

21 (C) the demonstrated good faith, including
22 actions taken by the alleged violator to rectify the cause of the
23 violation;

24 (D) any economic benefit gained through the
25 violation; and

26 (E) the amount necessary to deter future
27 violations; and

1 (3) any other matters that justice may require.

2 (e) If, after examination of a possible violation and the
3 facts surrounding that possible violation, the executive director
4 concludes that a violation has occurred, the executive director may
5 issue a preliminary report stating the facts on which that
6 conclusion is based, recommending that a civil penalty under this
7 section be imposed on the person charged, and recommending the
8 amount of that proposed penalty. The executive director shall base
9 the recommended amount of the proposed penalty on the factors
10 provided by Subsection (d) of this section, and the executive
11 director shall analyze each factor for the benefit of the
12 commission.

13 (f) Not later than the 10th day after the date on which the
14 preliminary report is issued, the executive director shall give
15 written notice of the report to the person charged with the
16 violation. The notice must include a brief summary of the charges,
17 a statement of the amount of the civil penalty recommended, and a
18 statement of the right of the person charged to a hearing on the
19 occurrence of the violation or the amount of the penalty, or both
20 the occurrence of the violation and the amount of the penalty.

21 (g) Not later than the 20th day after the date on which
22 notice is received, the person charged may give to the commission
23 written consent to the executive director's report, including the
24 recommended civil penalty, or may make a written request for a
25 hearing.

26 (h) If the person charged with the violation consents to the
27 civil penalty recommended by the executive director or fails to

1 timely respond to the notice, the commission by order shall either
2 assess that penalty or order a hearing to be held on the findings
3 and recommendations in the executive director's report. If the
4 commission assesses the penalty recommended by the report, the
5 commission shall give written notice to the person charged of its
6 decision.

7 (i) If the person charged requests or the commission orders
8 a hearing, the commission shall call a hearing and give notice of
9 the hearing. As a result of the hearing, the commission by order
10 may find that a violation has occurred and may assess a civil
11 penalty, may find that a violation has occurred but that no penalty
12 should be assessed, or may find that no violation has occurred.
13 All proceedings under this subsection are subject to the
14 Administrative Procedure and Texas Register Act (Article 6252-13a,
15 Vernon's Texas Civil Statutes). In making any penalty decision,
16 the commission shall analyze each of the factors provided by
17 Subsection (d) of this section.

18 (j) The commission shall give notice of its decision to the
19 person charged, and if the commission finds that a violation has
20 occurred and has assessed a civil penalty, the commission shall
21 give written notice to the person charged of its findings, of the
22 amount of the penalty, and of his right to judicial review of the
23 commission's order. If the commission is required to give notice
24 of a civil penalty under this subsection or Subsection (h) of this
25 section, the commission shall file notice of its decision in the
26 Texas Register not later than the 10th day after the date on which
27 the decision is adopted.

1 (k) Within the 30-day period immediately following the day
2 on which the commission's order is final, as provided by Section
3 16(c), Administrative Procedure and Texas Register Act (Article
4 6252-13a, Vernon's Texas Civil Statutes), the person charged with
5 the civil penalty:

6 (1) shall pay the amount of the penalty in full; or

7 (2) if the person seeks judicial review of either the
8 fact of the violation or the amount of the penalty or of both the
9 fact of the violation and the amount of the penalty:

10 (A) shall forward the amount of the penalty to
11 the commission for placement in an escrow account; or

12 (B) instead of payment into an escrow account,
13 shall post with the commission a supersedeas bond in a form
14 approved by the commission for the amount of the penalty to be
15 effective until all judicial review of the order or decision is
16 final.

17 (1) If the person charged with the penalty fails to forward
18 the amount of the civil penalty to or to post the bond with the
19 commission within the period provided by Subsection (k) of this
20 section:

21 (1) the person has waived all legal rights to judicial
22 review; and

23 (2) the commission or the executive director may
24 forward the matter to the attorney general for enforcement.

25 (m) Judicial review of the order or decision of the
26 commission assessing the penalty shall be under the substantial
27 evidence rule and shall be instituted by filing a petition with a

1 district court in Travis County, as provided by Section 19,
2 Administrative Procedure and Texas Register Act (Article 6252-13a,
3 Vernon's Texas Civil Statutes).

4 (n) A penalty collected under this section shall be
5 deposited in the state treasury to the credit of the general
6 revenue fund.

7 (o) Notwithstanding any other provision to the contrary, the
8 commission may compromise, modify, or remit, with or without
9 condition, any civil penalty imposed under this section.

10 (p) Payment of an administrative penalty under this section
11 shall be full and complete satisfaction of the violation for which
12 the administrative penalty is assessed and shall preclude any other
13 civil or criminal penalty for the same violation.

14 SECTION 3. This Act takes effect September 1, 1987.

15 SECTION 4. The importance of this legislation and the
16 crowded condition of the calendars in both houses create an
17 emergency and an imperative public necessity that the
18 constitutional rule requiring bills to be read on three several
19 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Gib Lewis
Speaker of the House of Representatives

4-27-87
(date)

Sir:

We, your COMMITTEE ON NATURAL RESOURCES,
to whom was referred HB 1789 have had the same under consideration and beg to report
(measure)
back with the recommendation that it

() do pass, without amendment.
() do pass, with amendment(s).
(X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (X) yes () no An actuarial analysis was requested. () yes (X) no

An author's fiscal statement was requested. () yes (X) no

The Committee recommends that this measure be placed on the ~~XXXXXX XXXX~~ Calendar.

This measure () proposes new law. (X) amends existing law.

House Sponsor of Senate Measure _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Smith, T., Ch.	X			
Harris, J., V.C.	X			
Johnson, C., C.B.O.				X
Hammond	X			
Holzheuser	X			
Russell		X		
Shelley	X			
Toomey	X			
Yost		X		

Total
6 aye
2 nay
0 present, not voting
1 absent

Terrill R. Thompson
CHAIRMAN
Louisa Calfee
COMMITTEE COORDINATOR

BILL ANALYSIS

Background

Recent court decisions have prohibited the Texas Water Commission from issuing permits to use previously allocated water, even if the prior allowance is not used. Cancellation of unused or partially unused rights is the only method for the Commission to redistribute water according to current needs.

Purpose of the Bill

This bill would authorize the Texas Water Commission to cancel water rights based upon 5 years nonuse, with certain exceptions.

Section by Section Analysis

- SECTION 1. Amends Chapter 11, Water Code, to add a definition for permit, to provide that water rights that have not been used for 5 years may be cancelled, in whole or in part to the extent that the water rights have not been used, with certain exceptions for projects under construction. Provides exceptions to cancellation for municipal or industrial water users in certain circumstances.
- SECTION 2. Amends Chapter 11, Water Code, by adding Section 11.0821, which provides for an administrative penalty for violations of this Chapter or rules promulgated thereunder. Sets out a schedule of penalties for the stated violations, and provides guidelines for assessing penalties. Provides for a method for the accused to obtain a hearing and notice requirements and provides for payment of the penalty with procedures for appeal.
- SECTION 3. Effective date is September 1, 1987.
- SECTION 4. Emergency clause.

Rulemaking Authority

This bill would grant rulemaking authority to the Texas Water Commission under Sections 1 and 2.

Summary of Committee Action

Public notice was posted in accordance to the rules and a public hearing was held on Wednesday, April 15, 1987. On Wednesday, April 27, 1987, the full committee voted to report HB 1789 to the House as substituted with a recommendation that it do pass by a record vote of 6 ayes, 2 nays and zero present, not voting.

The following person testified in favor of HB 1789:

Bill Rose, Attorney

The following person testified in opposition to HB 1789:

Stuart Henry, Attorney
Sierra Club

The following person served as a resource witness on HB 1789:

Larry Soward
Texas Water Commission

Comparison of the Original Bill to the Substitute

The substitute bill combines the sections of the Water Code dealing with revocation of partly unused water rights and completely unused water rights. The substitute makes all the necessary conforming amendments, including repealing unnecessary sections and renumbering others. The substitute adds Section 11.0821, Water Code, to provide for administrative penalties.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 31, 1987

TO: Honorable Terral Smith, Chair
Committee on Natural Resources
House of Representatives
Austin, Texas

In Re: House Bill No. 1789
By: Craddick, Harris

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1789 (relating to the cancellation of water rights permits, certified filings, and certificates of adjudication) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: Water Commission;
LBB Staff: JO, HES, JWH, JG, LV

ADOPTED

as amended

MAY 26 1987

Betty Murray
Chief Clerk
House of Representatives

By Craddick, et al.

H.B. No. 1789

Substitute the following for H.B. No. 1789:

By J. Harris of Brazoria

C.S.H.B. No. 1789

A BILL TO BE ENTITLED

AN ACT

relating to the cancellation of water rights permits, certified filings, and certificates of adjudication; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 11, Water Code, is amended to read as follows:

SUBCHAPTER E. CANCELLATION OF PERMITS, CERTIFIED FILINGS, AND
CERTIFICATES OF ADJUDICATION FOR NONUSE

Sec. 11.171. DEFINITIONS. As used in this subchapter:

(1) "Other interested person" means any person other than a record holder who is interested in the permit or certified filing or any person whose direct interest would be served by the cancellation of the permit or certified filing in whole or part.

(2) "Certified filing" means a declaration of appropriation or affidavit that was filed with the State Board of Water Engineers under the provisions of Section 14, Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended.

(3) "Certificate of adjudication" means a certificate issued by the commission under Section 11.323 of this code.

(4) "Permit" means a right issued by the commission to use water.

Sec. 11.172. GENERAL PRINCIPLE. A permit, certified filing, or certificate of adjudication is subject to cancellation in whole

or part for five [10] years nonuse as provided by this subchapter.

Sec. 11.173. CANCELLATION IN WHOLE OR IN PART. ~~(a)~~ Except as provided by Subsections [Subsection] (b) and (c) of this section, if [no] part or all of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at any time during the five-year [10-year] period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is presumed to have been wilfully abandoned to the extent of nonuse during the five-year period, and the permit, certified filing, or certificate of adjudication is subject to cancellation in whole or in part as provided by this subchapter.

(b) A permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) of this section to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985).

(c) Permits and certificates of adjudication that include conditions for the commencement and completion of construction are exempt from the requirement of Subsection (a) of this section until not later than the fifth year after construction as authorized by the permit or the certificate of adjudication is complete. This subsection does not exempt a permit from cancellation under Section 11.146 of this code.

Sec. 11.174. COMMISSION TO INITIATE PROCEEDINGS. Except as provided by Subsections (b) and (c), Section 11.173, of this code,

1 if [When] the commission finds that its records do not show that
 2 all of the [any] water has been beneficially used under a permit,
 3 certified filing, or certificate of adjudication during the past
 4 five [10] years, the executive director may [shall] initiate
 5 proceedings, including a [terminated-by] public hearing, to cancel
 6 the permit, certified filing, or certificate of adjudication in
 7 whole or in part to the extent of the five years nonuse.

8 Sec. 11.175. NOTICE. (a) At least 30 days before the date
 9 of the hearing, the commission shall send notice of the hearing to
 10 the holder of the permit, certified filing, or certificate of
 11 adjudication being considered for total or partial cancellation.
 12 Notice shall be sent by certified mail, return receipt requested,
 13 to the last address shown by the records of the commission. [The
 14 ~~commission--shall--also--send--notice--by--regular--mail--to--all--other~~
 15 ~~holders---of---permits,---certified---filings,---certificates---of~~
 16 ~~adjudication,---and--claims--of--water--rights--pursuant--to--Section--11--303~~
 17 ~~of--this--code--in--the--same--watershed.~~]

18 (b) The commission shall also have the notice of the hearing
 19 published at least one time [~~once--a--week--for--two--consecutive~~
 20 ~~weeks,~~] at least 30 days before the date of the hearing, in a
 21 newspaper published in each county in which diversion of water from
 22 the source of supply was authorized or proposed to be made and in
 23 each county in which the water was authorized or proposed to be
 24 used, as shown by the records of the commission. If in any such
 25 county no newspaper is published, then the notice may be published
 26 in a newspaper having general circulation in the county.

27 Sec. 11.176. HEARING. The commission shall hold a hearing

1 and shall give the holder of the permit, certified filing, or
 2 certificate of adjudication and other interested persons an
 3 opportunity to be heard and to present evidence that water has, or
 4 has not, been beneficially used for the purposes authorized by the
 5 permit, certified filing, or certificate of adjudication during the
 6 five-year [10-year] period.

7 Sec. 11.177. [COMMISSION-FINDING;-ACTION:--At-the-conclusion
 8 of-the-hearing-if-the-commission--finds--that--no--water--has--been
 9 beneficially--used--for--authorized--purposes--during--the--10-year
 10 period,--the--appropriation--is--deemed--to--have---been---wilfully
 11 abandoned,--of-no-further-force-and-effect,--and-the-commission-shall
 12 cancel---the---permit,---certified---filing,---or---certificate--of
 13 adjudication-

14 [Sec:-11.178:--CANCELLATION-IN-PART:--(a)--Except-as-provided
 15 by-Subsection-(b)-of-this--section,--if--some--part--of--the--water
 16 authorized--to-be-appropriated-under-a-permit,--certified-filing,--or
 17 certificate-of-adjudication-has-not-been-put-to-beneficial--use--at
 18 any--time--during--the--10-year--period--immediately--preceding-the
 19 cancellation-proceedings-authorized-by-this--subchapter,--then--the
 20 permit,--certified-filing,--or-certificate-of-adjudication-is-subject
 21 to--partial--cancellation,--as--provided-by-this-subchapter,--to-the
 22 extent-of-the-10-years-nonuse-

23 [(b)--A--permit,--certified---filing,---or---certificate---of
 24 adjudication--or--a--portion--of--a--permit,--certified--filing,--or
 25 certificate-of--adjudication--is--exempt--from--cancellation--under
 26 Subsection--(a)--of--this--section--to--the--extent--of-the-owner's
 27 participation-in-the-Conservation-Reserve-Program-authorized-by-the

1 Food-Security-Act,--Pub. L. -No. -99-198,--Secs. --1231-1236,--99--Stat.
2 1354,--1509-1514- (1985)-

3 [Sec. -11-179. --COMMISSION-MAY-INITIATE-PROCEEDINGS. --When-the
4 commission--finds--that--its--records--do--not-show-proof-that-some
5 portion-of-the-water-has-been-used-during-the-past--10--years,--the
6 executive--director--may-initiate-proceedings,--terminated-by-public
7 hearing,--to-cancel-the-permit,--certified-filing,--or-certificate--of
8 adjudication-in-part.

9 [Sec. -11-180. --NOTICE. ---The--commission-shall-give-notice-of
10 the-hearing-as-provided-by-Section-11-175-of-this-code.

11 [Sec. -11-181. --HEARING. --The-commission-shall-hold-a--hearing
12 and--shall--give--the--holder--of--the-permit,--certified-filing,--or
13 certificate--of--adjudication--and--other--interested--persons---an
14 opportunity--to--be--heard--and--to--present-evidence-on-any-matter
15 pertinent-to-the-questions-at-issue.

16 [Sec. -11-182.] COMMISSION FINDING; ACTION. (a) At the
17 conclusion of the hearing, the commission shall cancel the permit,
18 certified filing, or certificate of adjudication to the extent that
19 it finds that:

20 (1) any portion of the water appropriated under the
21 permit, certified filing, or certificate of adjudication has not
22 been put to an authorized beneficial use during the five-year
23 [10-year] period;

24 (2) the holder has not used reasonable diligence in
25 applying the unused portion of the water to an authorized
26 beneficial use; and

27 (3) the holder has not been justified in the nonuse or

1 does not then have a bona fide intention of putting the unused
2 water to an authorized beneficial use within a reasonable time
3 after the hearing.

4 (b) In determining what constitutes a reasonable time as
5 used in Subsection (a)(3) of this section, the commission shall
6 give consideration to:

7 (1) the expenditures made or obligations incurred by
8 the holder in connection with the permit, certified filing, or
9 certificate of adjudication;

10 (2) the purpose to which the water is to be applied;

11 (3) the priority of the purpose; and

12 (4) the amount of time usually necessary to put water
13 to a beneficial use for the same purpose when diligently developed.

14 Sec. 11.178 [~~11-183~~]. RESERVOIR. If the holder of a permit,
15 certified filing, or certificate of adjudication has facilities for
16 the storage of water in a reservoir, the commission may allow him
17 to retain the impoundment to the extent of the conservation storage
18 capacity of the reservoir for domestic, livestock, or recreation
19 purposes.

20 Sec. 11.179 [~~11-184~~]. MUNICIPAL OR INDUSTRIAL PERMIT OR
21 CERTIFICATE OF ADJUDICATION AND CERTIFIED FILING. Regardless of
22 other provisions of this subchapter, all permits, certified
23 filings, and certificates of adjudication [~~no--portion--of---a~~
24 ~~certified--filing-held-by-a-city,-town,-village,-or-municipal-water~~
25 ~~district,~~] authorizing the storage and use of water for municipal
26 or industrial purposes are exempt from cancellation to the extent
27 that the water supply has been developed and can be expected to be

1 beneficially used within a reasonable time when projections based on accepted
2 methods are employed [~~7-shall-be-cancelled-if-water-has-been-put--to~~
3 ~~use--under--the-certified-filing-for-municipal-purposes-at-any-time~~
4 ~~during-the-10-year-period-immediately-preceding-the-institution--of~~
5 ~~cancellation-proceedings~~].

6 Sec. 11.180 [~~11-185~~]. EFFECT OF INACTION. Failure to
7 initiate cancellation proceedings under this subchapter does not
8 validate or improve the status of any permit, certified filing, or
9 certificate of adjudication in whole or in part.

10 Sec. 11.181 [~~11-186~~]. SUBSEQUENT PROCEEDINGS ON SAME WATER
11 RIGHT. Once cancellation proceedings have been initiated against a
12 particular permit, certified filing, or certificate of adjudication
13 and a hearing has been held, further cancellation proceedings shall
14 not be initiated against the same permit, certified filing, or
15 certificate of adjudication within the five-year period immediately
16 following the date of the hearing.

17 [Sections 11.182 [~~11-187~~] to 11.200 reserved for expansion]

18 SECTION 2. Chapter 11, Water Code, is amended by adding
19 Section 11.0821 to read as follows:

20 Sec. 11.0821. ADMINISTRATIVE PENALTY. (a) If a person
21 violates this chapter or a rule or order adopted or a permit or
22 certificate of adjudication issued under this chapter, the
23 commission may assess a civil penalty against that person as
24 provided by this section.

25 (b) A person who fails to file an annual report, as required
26 by Section 11.031 of this code, is subject to a civil penalty of
27 \$50 plus \$25 a month for each succeeding full month the report is

1 delinquent after March 1. The maximum penalty under this
2 subsection is \$200.

3 (c) A person who violates a provision of this chapter other
4 than Section 11.031 of this code, or who violates a rule, order, or
5 provision of a certified filing, permit, or certificate of
6 adjudication is subject to a civil penalty in an amount not to
7 exceed \$5,000 a day. Each day a violation continues may be
8 considered a separate violation for purposes of penalty assessment.

9 (d) In determining the amount of the civil penalty, the
10 commission shall consider:

11 (1) the nature, circumstances, extent, duration, and
12 gravity of the prohibited acts with special emphasis on the
13 potential impact of the violation on the stream and on the health,
14 welfare, and safety of the general public, as well as of persons
15 with a right to use water from the stream;

16 (2) with respect to the alleged violator:

17 (A) the history and extent of previous
18 violations;

19 (B) the degree of culpability including whether
20 the violation could have been reasonably avoided;

21 (C) the demonstrated good faith, including
22 actions taken by the alleged violator to rectify the cause of the
23 violation;

24 (D) any economic benefit gained through the
25 violation; and

26 (E) the amount necessary to deter future
27 violations; and

1 (3) any other matters that justice may require.

2 (e) If, after examination of a possible violation and the
3 facts surrounding that possible violation, the executive director
4 concludes that a violation has occurred, the executive director may
5 issue a preliminary report stating the facts on which that
6 conclusion is based, recommending that a civil penalty under this
7 section be imposed on the person charged, and recommending the
8 amount of that proposed penalty. The executive director shall base
9 the recommended amount of the proposed penalty on the factors
10 provided by Subsection (d) of this section, and the executive
11 director shall analyze each factor for the benefit of the
12 commission.

13 (f) Not later than the 10th day after the date on which the
14 preliminary report is issued, the executive director shall give
15 written notice of the report to the person charged with the
16 violation. The notice must include a brief summary of the charges,
17 a statement of the amount of the civil penalty recommended, and a
18 statement of the right of the person charged to a hearing on the
19 occurrence of the violation or the amount of the penalty, or both
20 the occurrence of the violation and the amount of the penalty.

21 (g) Not later than the 20th day after the date on which
22 notice is received, the person charged may give to the commission
23 written consent to the executive director's report, including the
24 recommended civil penalty, or may make a written request for a
25 hearing.

26 (h) If the person charged with the violation consents to the
27 civil penalty recommended by the executive director or fails to

1 timely respond to the notice, the commission by order shall either
2 assess that penalty or order a hearing to be held on the findings
3 and recommendations in the executive director's report. If the
4 commission assesses the penalty recommended by the report, the
5 commission shall give written notice to the person charged of its
6 decision.

7 (i) If the person charged requests or the commission orders
8 a hearing, the commission shall call a hearing and give notice of
9 the hearing. As a result of the hearing, the commission by order
10 may find that a violation has occurred and may assess a civil
11 penalty, may find that a violation has occurred but that no penalty
12 should be assessed, or may find that no violation has occurred.
13 All proceedings under this subsection are subject to the
14 Administrative Procedure and Texas Register Act (Article 6252-13a,
15 Vernon's Texas Civil Statutes). In making any penalty decision,
16 the commission shall analyze each of the factors provided by
17 Subsection (d) of this section.

18 (j) The commission shall give notice of its decision to the
19 person charged, and if the commission finds that a violation has
20 occurred and has assessed a civil penalty, the commission shall
21 give written notice to the person charged of its findings, of the
22 amount of the penalty, and of his right to judicial review of the
23 commission's order. If the commission is required to give notice
24 of a civil penalty under this subsection or Subsection (h) of this
25 section, the commission shall file notice of its decision in the
26 Texas Register not later than the 10th day after the date on which
27 the decision is adopted.

1 (k) Within the 30-day period immediately following the day
2 on which the commission's order is final, as provided by Section
3 16(c), Administrative Procedure and Texas Register Act (Article
4 6252-13a, Vernon's Texas Civil Statutes), the person charged with
5 the civil penalty:

6 (1) shall pay the amount of the penalty in full; or

7 (2) if the person seeks judicial review of either the
8 fact of the violation or the amount of the penalty or of both the
9 fact of the violation and the amount of the penalty:

10 (A) shall forward the amount of the penalty to
11 the commission for placement in an escrow account; or

12 (B) instead of payment into an escrow account,
13 shall post with the commission a supersedeas bond in a form
14 approved by the commission for the amount of the penalty to be
15 effective until all judicial review of the order or decision is
16 final.

17 (l) If the person charged with the penalty fails to forward
18 the amount of the civil penalty to or to post the bond with the
19 commission within the period provided by Subsection (k) of this
20 section:

21 (1) the person has waived all legal rights to judicial
22 review; and

23 (2) the commission or the executive director may
24 forward the matter to the attorney general for enforcement.

25 (m) Judicial review of the order or decision of the
26 commission assessing the penalty shall be under the substantial
27 evidence rule and shall be instituted by filing a petition with a

1 district court in Travis County, as provided by Section 19,
2 Administrative Procedure and Texas Register Act (Article 6252-13a,
3 Vernon's Texas Civil Statutes).

4 (n) A penalty collected under this section shall be
5 deposited in the state treasury to the credit of the general
6 revenue fund.

7 (o) Notwithstanding any other provision to the contrary, the
8 commission may compromise, modify, or remit, with or without
9 condition, any civil penalty imposed under this section.

10 (p) Payment of an administrative penalty under this section
11 shall be full and complete satisfaction of the violation for which
12 the administrative penalty is assessed and shall preclude any other
13 civil or criminal penalty for the same violation.

14 SECTION 3. This Act takes effect September 1, 1987.

15 SECTION 4. The importance of this legislation and the
16 crowded condition of the calendars in both houses create an
17 emergency and an imperative public necessity that the
18 constitutional rule requiring bills to be read on three several
19 days in each house be suspended, and this rule is hereby suspended.

①
AMENDMENT NO. _____

BY

Cuddihill

___ Amend C.S.H.B. No. 1789 on page 6, line 27, by striking
the words "has been developed and".

ADOPTED

MAY 26 1987

Betty Murray
Chief Clerk
House of Representatives

[Handwritten signature]

Amend C.S.H.B. 1789 on page 2, lines 2-18 by amending Section 11.173(a) and (b) to read as follows:

(a) Except as provided by Subsections [~~Subsection~~] (b) and (c) of this section, if ~~no~~ part or all of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at any time during the five-year [~~10-year~~] period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is subject to cancellation to the extent of nonuse during the five-year period [~~presumed-to have-been-wilfully-abandoned~~], and the permit, certified filing, or certificate of adjudication is subject to cancellation in whole or in part as provided by this subchapter.

(b) A permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) of this section to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985) or other such State or Federal conservation or farm programs requiring land diversion and/or irrigation practices.

ADOPTED

MAY 26 1987

Betty Murray
Chief Clerk
House of Representatives

ENGROSSED
SECOND READING

By Craddick, et al.

H.B. No. 1789

A BILL TO BE ENTITLED

AN ACT

relating to the cancellation of water rights permits, certified filings, and certificates of adjudication; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 11, Water Code, is amended to read as follows:

SUBCHAPTER E. CANCELLATION OF PERMITS, CERTIFIED FILINGS, AND
CERTIFICATES OF ADJUDICATION FOR NONUSE

Sec. 11.171. DEFINITIONS. As used in this subchapter:

(1) "Other interested person" means any person other than a record holder who is interested in the permit or certified filing or any person whose direct interest would be served by the cancellation of the permit or certified filing in whole or part.

(2) "Certified filing" means a declaration of appropriation or affidavit that was filed with the State Board of Water Engineers under the provisions of Section 14, Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended.

(3) "Certificate of adjudication" means a certificate issued by the commission under Section 11.323 of this code.

(4) "Permit" means a right issued by the commission to use water.

Sec. 11.172. GENERAL PRINCIPLE. A permit, certified filing, or certificate of adjudication is subject to cancellation in whole

or part for five [~~10~~] years nonuse as provided by this subchapter.

Sec. 11.173. CANCELLATION IN WHOLE OR IN PART. (a) Except as provided by Subsections [~~Subsection~~] (b) and (c) of this section, if [~~no~~] part or all of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at any time during the five-year [~~10-year~~] period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is subject to cancellation to the extent of nonuse during the five-year period [~~presumed--to--have--been--willfully abandoned~~], and the permit, certified filing, or certificate of adjudication is subject to cancellation in whole or in part as provided by this subchapter.

(b) A permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) of this section to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985) or other such State or Federal conservation or farm programs requiring land diversion and/or irrigation practices.

(c) Permits and certificates of adjudication that include conditions for the commencement and completion of construction are exempt from the requirement of Subsection (a) of this section until not later than the fifth year after construction as authorized by the permit or the certificate of adjudication is complete. This subsection does not exempt a permit from cancellation under Section 11.146 of this code.

1 Sec. 11.174. COMMISSION TO INITIATE PROCEEDINGS. Except as
 2 provided by Subsections (b) and (c), Section 11.173, of this code,
 3 if [When] the commission finds that its records do not show that
 4 all of the [any] water has been beneficially used under a permit,
 5 certified filing, or certificate of adjudication during the past
 6 five [10] years, the executive director may [shall] initiate
 7 proceedings, including a [terminated-by] public hearing, to cancel
 8 the permit, certified filing, or certificate of adjudication in
 9 whole or in part to the extent of the five years nonuse.

10 Sec. 11.175. NOTICE. (a) At least 30 days before the date
 11 of the hearing, the commission shall send notice of the hearing to
 12 the holder of the permit, certified filing, or certificate of
 13 adjudication being considered for total or partial cancellation.
 14 Notice shall be sent by certified mail, return receipt requested,
 15 to the last address shown by the records of the commission. [The
 16 ~~commission shall also send notice by regular mail to all other~~
 17 ~~holders of permits, certified filings, certificates of~~
 18 ~~adjudication, and claims of water rights pursuant to Section 11-303~~
 19 ~~of this code in the same watershed.]~~

20 (b) The commission shall also have the notice of the hearing
 21 published at least one time [~~once a week for two consecutive~~
 22 ~~weeks,~~] at least 30 days before the date of the hearing, in a
 23 newspaper published in each county in which diversion of water from
 24 the source of supply was authorized or proposed to be made and in
 25 each county in which the water was authorized or proposed to be
 26 used, as shown by the records of the commission. If in any such
 27 county no newspaper is published, then the notice may be published

1 in a newspaper having general circulation in the county.

2 Sec. 11.176. HEARING. The commission shall hold a hearing
3 and shall give the holder of the permit, certified filing, or
4 certificate of adjudication and other interested persons an
5 opportunity to be heard and to present evidence that water has, or
6 has not, been beneficially used for the purposes authorized by the
7 permit, certified filing, or certificate of adjudication during the
8 five-year [10-year] period.

9 Sec. 11.177. [~~COMMISSION FINDING; ACTION. --At the conclusion~~
10 ~~of the hearing if the commission finds that no water has been~~
11 ~~beneficially used for authorized purposes during the 10-year~~
12 ~~period, the appropriation is deemed to have been wilfully~~
13 ~~abandoned, of no further force and effect, and the commission shall~~
14 ~~cancel the permit, certified filing, or certificate of~~
15 ~~adjudication.~~

16 [Sec. 11.178. ~~CANCELLATION IN PART. --(a) Except as provided~~
17 ~~by Subsection (b) of this section, if some part of the water~~
18 ~~authorized to be appropriated under a permit, certified filing, or~~
19 ~~certificate of adjudication has not been put to beneficial use at~~
20 ~~any time during the 10-year period immediately preceding the~~
21 ~~cancellation proceedings authorized by this subchapter, then the~~
22 ~~permit, certified filing, or certificate of adjudication is subject~~
23 ~~to partial cancellation, as provided by this subchapter, to the~~
24 ~~extent of the 10-years nonuse.~~

25 [(b) ~~A permit, certified filing, or certificate of~~
26 ~~adjudication or a portion of a permit, certified filing, or~~
27 ~~certificate of adjudication is exempt from cancellation under~~

1 Subsection-(a)-of--this--section--to--the--extent--of--the--owner's
2 participation-in-the-Conservation-Reserve-Program-authorized-by-the
3 Food--Security--Act,--Pub. L. --No. 99-198,--Sees. --1231-1236,--99-Stat.
4 1354,--1509-1514--(1985)-

5 [See--11-179. --COMMISSION-MAY-INITIATE-PROCEEDINGS. --When-the
6 commission-finds-that-its-records--do--not--show--proof--that--some
7 portion--of--the--water-has-been-used-during-the-past-10-years,--the
8 executive-director-may-initiate-proceedings,--terminated--by--public
9 hearing,--to-cancel-the-permit,--certified-filing,--or-certificate-of
10 adjudication-in-part-

11 [See--11-180. --NOTICE. --The-commission-shall-give--notice--of
12 the-hearing-as-provided-by-Section-11-175-of-this-code-

13 [See--11-181. --HEARING. ---The-commission-shall-hold-a-hearing
14 and-shall-give-the-holder--of--the--permit,--certified--filing,--or
15 certificate---of--adjudication--and--other--interested--persons--an
16 opportunity-to-be-heard-and--to--present--evidence--on--any--matter
17 pertinent-to-the-questions-at-issue-

18 [See--11-182.] COMMISSION FINDING; ACTION. (a) At the
19 conclusion of the hearing, the commission shall cancel the permit,
20 certified filing, or certificate of adjudication to the extent that
21 it finds that:

22 (1) any portion of the water appropriated under the
23 permit, certified filing, or certificate of adjudication has not
24 been put to an authorized beneficial use during the five-year
25 [10-year] period;

26 (2) the holder has not used reasonable diligence in
27 applying the unused portion of the water to an authorized

beneficial use; and

(3) the holder has not been justified in the nonuse or does not then have a bona fide intention of putting the unused water to an authorized beneficial use within a reasonable time after the hearing.

(b) In determining what constitutes a reasonable time as used in Subsection (a)(3) of this section, the commission shall give consideration to:

(1) the expenditures made or obligations incurred by the holder in connection with the permit, certified filing, or certificate of adjudication;

(2) the purpose to which the water is to be applied;

(3) the priority of the purpose; and

(4) the amount of time usually necessary to put water to a beneficial use for the same purpose when diligently developed.

Sec. 11.178 [~~11-183~~]. RESERVOIR. If the holder of a permit, certified filing, or certificate of adjudication has facilities for the storage of water in a reservoir, the commission may allow him to retain the impoundment to the extent of the conservation storage capacity of the reservoir for domestic, livestock, or recreation purposes.

Sec. 11.179 [~~11-184~~]. MUNICIPAL OR INDUSTRIAL PERMIT OR CERTIFICATE OF ADJUDICATION AND CERTIFIED FILING. Regardless of other provisions of this subchapter, all permits, certified filings, and certificates of adjudication [~~no--pertien--ef--a eertified-filing-held-by-a-city,-town,-village,-or-munieipal--water distriet,~~] authorizing the storage and use of water for municipal

1 or industrial purposes are exempt from cancellation to the extent
 2 that the water supply can be expected to be beneficially used
 3 within a reasonable time when projections based on accepted methods
 4 are employed~~[7-shall-be-cancelled-if-water--has--been--put--to--use~~
 5 ~~under--the--certified--filing--for--municipal--purposes-at-any-time~~
 6 ~~during-the-10-year-period-immediately-preceding-the-institution--of~~
 7 ~~cancellation-proceedings]~~.

8 Sec. 11.180 ~~[11-185]~~. EFFECT OF INACTION. Failure to
 9 initiate cancellation proceedings under this subchapter does not
 10 validate or improve the status of any permit, certified filing, or
 11 certificate of adjudication in whole or in part.

12 Sec. 11.181 ~~[11-186]~~. SUBSEQUENT PROCEEDINGS ON SAME WATER
 13 RIGHT. Once cancellation proceedings have been initiated against a
 14 particular permit, certified filing, or certificate of adjudication
 15 and a hearing has been held, further cancellation proceedings shall
 16 not be initiated against the same permit, certified filing, or
 17 certificate of adjudication within the five-year period immediately
 18 following the date of the hearing.

19 [Sections 11.182 ~~[11-187]~~ to 11.200 reserved for expansion]

20 SECTION 2. Chapter 11, Water Code, is amended by adding
 21 Section 11.0821 to read as follows:

22 Sec. 11.0821. ADMINISTRATIVE PENALTY. (a) If a person
 23 violates this chapter or a rule or order adopted or a permit or
 24 certificate of adjudication issued under this chapter, the
 25 commission may assess a civil penalty against that person as
 26 provided by this section.

27 (b) A person who fails to file an annual report, as required

1 by Section 11.031 of this code, is subject to a civil penalty of
2 \$50 plus \$25 a month for each succeeding full month the report is
3 delinquent after March 1. The maximum penalty under this
4 subsection is \$200.

5 (c) A person who violates a provision of this chapter other
6 than Section 11.031 of this code, or who violates a rule, order, or
7 provision of a certified filing, permit, or certificate of
8 adjudication is subject to a civil penalty in an amount not to
9 exceed \$5,000 a day. Each day a violation continues may be
10 considered a separate violation for purposes of penalty assessment.

11 (d) In determining the amount of the civil penalty, the
12 commission shall consider:

13 (1) the nature, circumstances, extent, duration, and
14 gravity of the prohibited acts with special emphasis on the
15 potential impact of the violation on the stream and on the health,
16 welfare, and safety of the general public, as well as of persons
17 with a right to use water from the stream;

18 (2) with respect to the alleged violator:

19 (A) the history and extent of previous
20 violations;

21 (B) the degree of culpability including whether
22 the violation could have been reasonably avoided;

23 (C) the demonstrated good faith, including
24 actions taken by the alleged violator to rectify the cause of the
25 violation;

26 (D) any economic benefit gained through the
27 violation; and

1 (E) the amount necessary to deter future
2 violations; and

3 (3) any other matters that justice may require.

4 (e) If, after examination of a possible violation and the
5 facts surrounding that possible violation, the executive director
6 concludes that a violation has occurred, the executive director may
7 issue a preliminary report stating the facts on which that
8 conclusion is based, recommending that a civil penalty under this
9 section be imposed on the person charged, and recommending the
10 amount of that proposed penalty. The executive director shall base
11 the recommended amount of the proposed penalty on the factors
12 provided by Subsection (d) of this section, and the executive
13 director shall analyze each factor for the benefit of the
14 commission.

15 (f) Not later than the 10th day after the date on which the
16 preliminary report is issued, the executive director shall give
17 written notice of the report to the person charged with the
18 violation. The notice must include a brief summary of the charges,
19 a statement of the amount of the civil penalty recommended, and a
20 statement of the right of the person charged to a hearing on the
21 occurrence of the violation or the amount of the penalty, or both
22 the occurrence of the violation and the amount of the penalty.

23 (g) Not later than the 20th day after the date on which
24 notice is received, the person charged may give to the commission
25 written consent to the executive director's report, including the
26 recommended civil penalty, or may make a written request for a
27 hearing.

1 (h) If the person charged with the violation consents to the
 2 civil penalty recommended by the executive director or fails to
 3 timely respond to the notice, the commission by order shall either
 4 assess that penalty or order a hearing to be held on the findings
 5 and recommendations in the executive director's report. If the
 6 commission assesses the penalty recommended by the report, the
 7 commission shall give written notice to the person charged of its
 8 decision.

9 (i) If the person charged requests or the commission orders
 10 a hearing, the commission shall call a hearing and give notice of
 11 the hearing. As a result of the hearing, the commission by order
 12 may find that a violation has occurred and may assess a civil
 13 penalty, may find that a violation has occurred but that no penalty
 14 should be assessed, or may find that no violation has occurred.
 15 All proceedings under this subsection are subject to the
 16 Administrative Procedure and Texas Register Act (Article 6252-13a,
 17 Vernon's Texas Civil Statutes). In making any penalty decision,
 18 the commission shall analyze each of the factors provided by
 19 Subsection (d) of this section.

20 (j) The commission shall give notice of its decision to the
 21 person charged, and if the commission finds that a violation has
 22 occurred and has assessed a civil penalty, the commission shall
 23 give written notice to the person charged of its findings, of the
 24 amount of the penalty, and of his right to judicial review of the
 25 commission's order. If the commission is required to give notice
 26 of a civil penalty under this subsection or Subsection (h) of this
 27 section, the commission shall file notice of its decision in the

1 Texas Register not later than the 10th day after the date on which
2 the decision is adopted.

3 (k) Within the 30-day period immediately following the day
4 on which the commission's order is final, as provided by Section
5 16(c), Administrative Procedure and Texas Register Act (Article
6 6252-13a, Vernon's Texas Civil Statutes), the person charged with
7 the civil penalty:

8 (1) shall pay the amount of the penalty in full; or

9 (2) if the person seeks judicial review of either the
10 fact of the violation or the amount of the penalty or of both the
11 fact of the violation and the amount of the penalty:

12 (A) shall forward the amount of the penalty to
13 the commission for placement in an escrow account; or

14 (B) instead of payment into an escrow account,
15 shall post with the commission a supersedeas bond in a form
16 approved by the commission for the amount of the penalty to be
17 effective until all judicial review of the order or decision is
18 final.

19 (l) If the person charged with the penalty fails to forward
20 the amount of the civil penalty to or to post the bond with the
21 commission within the period provided by Subsection (k) of this
22 section:

23 (1) the person has waived all legal rights to judicial
24 review; and

25 (2) the commission or the executive director may
26 forward the matter to the attorney general for enforcement.

27 (m) Judicial review of the order or decision of the

1 commission assessing the penalty shall be under the substantial
2 evidence rule and shall be instituted by filing a petition with a
3 district court in Travis County, as provided by Section 19,
4 Administrative Procedure and Texas Register Act (Article 6252-13a,
5 Vernon's Texas Civil Statutes).

6 (n) A penalty collected under this section shall be
7 deposited in the state treasury to the credit of the general
8 revenue fund.

9 (o) Notwithstanding any other provision to the contrary, the
10 commission may compromise, modify, or remit, with or without
11 condition, any civil penalty imposed under this section.

12 (p) Payment of an administrative penalty under this section
13 shall be full and complete satisfaction of the violation for which
14 the administrative penalty is assessed and shall preclude any other
15 civil or criminal penalty for the same violation.

16 SECTION 3. This Act takes effect September 1, 1987.

17 SECTION 4. The importance of this legislation and the
18 crowded condition of the calendars in both houses create an
19 emergency and an imperative public necessity that the
20 constitutional rule requiring bills to be read on three several
21 days in each house be suspended, and this rule is hereby suspended.

HOUSE ENGROSSMENT

97 MAR 20 1977
HALL

By Craddick, et al.

H.B. No. 1789

A BILL TO BE ENTITLED

AN ACT

relating to the cancellation of water rights permits, certified filings, and certificates of adjudication; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 11, Water Code, is amended to read as follows:

SUBCHAPTER E. CANCELLATION OF PERMITS, CERTIFIED FILINGS, AND
CERTIFICATES OF ADJUDICATION FOR NONUSE

Sec. 11.171. DEFINITIONS. As used in this subchapter:

(1) "Other interested person" means any person other than a record holder who is interested in the permit or certified filing or any person whose direct interest would be served by the cancellation of the permit or certified filing in whole or part.

(2) "Certified filing" means a declaration of appropriation or affidavit that was filed with the State Board of Water Engineers under the provisions of Section 14, Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended.

(3) "Certificate of adjudication" means a certificate issued by the commission under Section 11.323 of this code.

(4) "Permit" means a right issued by the commission to use water.

Sec. 11.172. GENERAL PRINCIPLE. A permit, certified filing, or certificate of adjudication is subject to cancellation in whole

or part for five [~~10~~] years nonuse as provided by this subchapter.

Sec. 11.173. CANCELLATION IN WHOLE OR IN PART. (a) Except as provided by Subsections [~~Subsection~~] (b) and (c) of this section, if [~~no~~] part or all of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at any time during the five-year [~~10-year~~] period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is subject to cancellation to the extent of nonuse during the five-year period [~~presumed--to--have--been--wilfully abandoned~~], and the permit, certified filing, or certificate of adjudication is subject to cancellation in whole or in part as provided by this subchapter.

(b) A permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) of this section to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985) or other such State or Federal conservation or farm programs requiring land diversion and/or irrigation practices.

(c) Permits and certificates of adjudication that include conditions for the commencement and completion of construction are exempt from the requirement of Subsection (a) of this section until not later than the fifth year after construction as authorized by the permit or the certificate of adjudication is complete. This subsection does not exempt a permit from cancellation under Section 11.146 of this code.

1 Sec. 11.174. COMMISSION TO INITIATE PROCEEDINGS. Except as
 2 provided by Subsections (b) and (c), Section 11.173, of this code,
 3 if [When] the commission finds that its records do not show that
 4 all of the [any] water has been beneficially used under a permit,
 5 certified filing, or certificate of adjudication during the past
 6 five [10] years, the executive director may [shall] initiate
 7 proceedings, including a [terminated-by] public hearing, to cancel
 8 the permit, certified filing, or certificate of adjudication in
 9 whole or in part to the extent of the five years nonuse.

10 Sec. 11.175. NOTICE. (a) At least 30 days before the date
 11 of the hearing, the commission shall send notice of the hearing to
 12 the holder of the permit, certified filing, or certificate of
 13 adjudication being considered for total or partial cancellation.
 14 Notice shall be sent by certified mail, return receipt requested,
 15 to the last address shown by the records of the commission. [The
 16 ~~commission-shall-also-send-notice-by--regular--mail--to--all--other~~
 17 ~~holders----of---permits,---certified---filings,---certificates---of~~
 18 ~~adjudication,--and-claims-of-water-rights-pursuant-to-Section-11.303~~
 19 ~~of-this-code-in-the-same-watershed-]~~

20 (b) The commission shall also have the notice of the hearing
 21 published at least one time [~~once--a--week--for--two--consecutive~~
 22 ~~weeks,]~~ at least 30 days before the date of the hearing, in a
 23 newspaper published in each county in which diversion of water from
 24 the source of supply was authorized or proposed to be made and in
 25 each county in which the water was authorized or proposed to be
 26 used, as shown by the records of the commission. If in any such
 27 county no newspaper is published, then the notice may be published

in a newspaper having general circulation in the county.

Sec. 11.176. HEARING. The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence that water has, or has not, been beneficially used for the purposes authorized by the permit, certified filing, or certificate of adjudication during the five-year [10-year] period.

Sec. 11.177. [COMMISSION-FINDING,-ACTION:--At-the-conclusion of--the--hearing--if--the--commission--finds--that--no--water--has--been beneficially--used--for--authorized--purposes--during--the--10-year period,---the---appropriation--is--deemed--to--have--been--wilfully abandoned,-of-no-further-force-and-effect,-and-the-commission-shall cancel--the---permit,---certified---filing,---or---certificate---of adjudication-

[Sec. 11.178. --CANCELLATION-IN-PART:--(a)--Except-as-provided by--Subsection--(b)--of--this--section,--if--some-part-of-the-water authorized-to-be-appropriated-under-a-permit,-certified-filing,--or certificate--of--adjudication-has-not-been-put-to-beneficial-use-at any-time--during--the--10-year--period--immediately--preceding--the cancellation--proceedings--authorized--by--this--subchapter,--then--the permit,-certified-filing,-or-certificate-of-adjudication-is-subject to-partial-cancellation,-as-provided-by--this--subchapter,--to--the extent-of-the-10-years-nonuse-

[(b)--A---permit,---certified---filing,---or---certificate--of adjudication-or--a--portion--of--a--permit,-certified--filing,--or certificate--of--adjudication--is--exempt--from--cancellation-under

Subsection (a) of this section to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub. L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985).

[See 11-179. COMMISSION MAY INITIATE PROCEEDINGS. When the commission finds that its records do not show proof that some portion of the water has been used during the past 10 years, the executive director may initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication in part.

[See 11-180. NOTICE. The commission shall give notice of the hearing as provided by Section 11-175 of this code.

[See 11-181. HEARING. The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

[See 11-182.] COMMISSION FINDING; ACTION. (a) At the conclusion of the hearing, the commission shall cancel the permit, certified filing, or certificate of adjudication to the extent that it finds that:

(1) any portion of the water appropriated under the permit, certified filing, or certificate of adjudication has not been put to an authorized beneficial use during the five-year [10-year] period;

(2) the holder has not used reasonable diligence in applying the unused portion of the water to an authorized

beneficial use; and

(3) the holder has not been justified in the nonuse or does not then have a bona fide intention of putting the unused water to an authorized beneficial use within a reasonable time after the hearing.

(b) In determining what constitutes a reasonable time as used in Subsection (a)(3) of this section, the commission shall give consideration to:

(1) the expenditures made or obligations incurred by the holder in connection with the permit, certified filing, or certificate of adjudication;

(2) the purpose to which the water is to be applied;

(3) the priority of the purpose; and

(4) the amount of time usually necessary to put water to a beneficial use for the same purpose when diligently developed.

Sec. 11.178 [~~11-183~~]. RESERVOIR. If the holder of a permit, certified filing, or certificate of adjudication has facilities for the storage of water in a reservoir, the commission may allow him to retain the impoundment to the extent of the conservation storage capacity of the reservoir for domestic, livestock, or recreation purposes.

Sec. 11.179 [~~11-184~~]. MUNICIPAL OR INDUSTRIAL PERMIT OR CERTIFICATE OF ADJUDICATION AND CERTIFIED FILING. Regardless of other provisions of this subchapter, all permits, certified filings, and certificates of adjudication [~~no--portion--of--a certified-filing-held-by-a-city,-town,-village,-or-municipal--water district,~~] authorizing the storage and use of water for municipal

1 or industrial purposes are exempt from cancellation to the extent
2 that the water supply can be expected to be beneficially used
3 within a reasonable time when projections based on accepted methods
4 are employed[~~7-shall-be-cancelled-if-water--has--been--put--to--use~~
5 ~~under--the--certified--filing--for--municipal--purposes-at-any-time~~
6 ~~during-the-10-year-period-immediately-preceding-the-institution--of~~
7 ~~cancellation-proceedings~~].

8 Sec. 11.180 [~~11-185~~]. EFFECT OF INACTION. Failure to
9 initiate cancellation proceedings under this subchapter does not
10 validate or improve the status of any permit, certified filing, or
11 certificate of adjudication in whole or in part.

12 Sec. 11.181 [~~11-186~~]. SUBSEQUENT PROCEEDINGS ON SAME WATER
13 RIGHT. Once cancellation proceedings have been initiated against a
14 particular permit, certified filing, or certificate of adjudication
15 and a hearing has been held, further cancellation proceedings shall
16 not be initiated against the same permit, certified filing, or
17 certificate of adjudication within the five-year period immediately
18 following the date of the hearing.

19 [Sections 11.182 [~~11-187~~] to 11.200 reserved for expansion]

20 SECTION 2. Chapter 11, Water Code, is amended by adding
21 Section 11.0821 to read as follows:

22 Sec. 11.0821. ADMINISTRATIVE PENALTY. (a) If a person
23 violates this chapter or a rule or order adopted or a permit or
24 certificate of adjudication issued under this chapter, the
25 commission may assess a civil penalty against that person as
26 provided by this section.

27 (b) A person who fails to file an annual report, as required

1 by Section 11.031 of this code, is subject to a civil penalty of
2 \$50 plus \$25 a month for each succeeding full month the report is
3 delinquent after March 1. The maximum penalty under this
4 subsection is \$200.

5 (c) A person who violates a provision of this chapter other
6 than Section 11.031 of this code, or who violates a rule, order, or
7 provision of a certified filing, permit, or certificate of
8 adjudication is subject to a civil penalty in an amount not to
9 exceed \$5,000 a day. Each day a violation continues may be
10 considered a separate violation for purposes of penalty assessment.

11 (d) In determining the amount of the civil penalty, the
12 commission shall consider:

13 (1) the nature, circumstances, extent, duration, and
14 gravity of the prohibited acts with special emphasis on the
15 potential impact of the violation on the stream and on the health,
16 welfare, and safety of the general public, as well as of persons
17 with a right to use water from the stream;

18 (2) with respect to the alleged violator:

19 (A) the history and extent of previous
20 violations;

21 (B) the degree of culpability including whether
22 the violation could have been reasonably avoided;

23 (C) the demonstrated good faith, including
24 actions taken by the alleged violator to rectify the cause of the
25 violation;

26 (D) any economic benefit gained through the
27 violation; and

1 (E) the amount necessary to deter future
2 violations; and

3 (3) any other matters that justice may require.

4 (e) If, after examination of a possible violation and the
5 facts surrounding that possible violation, the executive director
6 concludes that a violation has occurred, the executive director may
7 issue a preliminary report stating the facts on which that
8 conclusion is based, recommending that a civil penalty under this
9 section be imposed on the person charged, and recommending the
10 amount of that proposed penalty. The executive director shall base
11 the recommended amount of the proposed penalty on the factors
12 provided by Subsection (d) of this section, and the executive
13 director shall analyze each factor for the benefit of the
14 commission.

15 (f) Not later than the 10th day after the date on which the
16 preliminary report is issued, the executive director shall give
17 written notice of the report to the person charged with the
18 violation. The notice must include a brief summary of the charges,
19 a statement of the amount of the civil penalty recommended, and a
20 statement of the right of the person charged to a hearing on the
21 occurrence of the violation or the amount of the penalty, or both
22 the occurrence of the violation and the amount of the penalty.

23 (g) Not later than the 20th day after the date on which
24 notice is received, the person charged may give to the commission
25 written consent to the executive director's report, including the
26 recommended civil penalty, or may make a written request for a
27 hearing.

1 (h) If the person charged with the violation consents to the
2 civil penalty recommended by the executive director or fails to
3 timely respond to the notice, the commission by order shall either
4 assess that penalty or order a hearing to be held on the findings
5 and recommendations in the executive director's report. If the
6 commission assesses the penalty recommended by the report, the
7 commission shall give written notice to the person charged of its
8 decision.

9 (i) If the person charged requests or the commission orders
10 a hearing, the commission shall call a hearing and give notice of
11 the hearing. As a result of the hearing, the commission by order
12 may find that a violation has occurred and may assess a civil
13 penalty, may find that a violation has occurred but that no penalty
14 should be assessed, or may find that no violation has occurred.
15 All proceedings under this subsection are subject to the
16 Administrative Procedure and Texas Register Act (Article 6252-13a,
17 Vernon's Texas Civil Statutes). In making any penalty decision,
18 the commission shall analyze each of the factors provided by
19 Subsection (d) of this section.

20 (j) The commission shall give notice of its decision to the
21 person charged, and if the commission finds that a violation has
22 occurred and has assessed a civil penalty, the commission shall
23 give written notice to the person charged of its findings, of the
24 amount of the penalty, and of his right to judicial review of the
25 commission's order. If the commission is required to give notice
26 of a civil penalty under this subsection or Subsection (h) of this
27 section, the commission shall file notice of its decision in the

1 Texas Register not later than the 10th day after the date on which
2 the decision is adopted.

3 (k) Within the 30-day period immediately following the day
4 on which the commission's order is final, as provided by Section
5 16(c), Administrative Procedure and Texas Register Act (Article
6 6252-13a, Vernon's Texas Civil Statutes), the person charged with
7 the civil penalty:

8 (1) shall pay the amount of the penalty in full; or

9 (2) if the person seeks judicial review of either the
10 fact of the violation or the amount of the penalty or of both the
11 fact of the violation and the amount of the penalty:

12 (A) shall forward the amount of the penalty to
13 the commission for placement in an escrow account; or

14 (B) instead of payment into an escrow account,
15 shall post with the commission a supersedeas bond in a form
16 approved by the commission for the amount of the penalty to be
17 effective until all judicial review of the order or decision is
18 final.

19 (l) If the person charged with the penalty fails to forward
20 the amount of the civil penalty to or to post the bond with the
21 commission within the period provided by Subsection (k) of this
22 section:

23 (1) the person has waived all legal rights to judicial
24 review; and

25 (2) the commission or the executive director may
26 forward the matter to the attorney general for enforcement.

27 (m) Judicial review of the order or decision of the

1 commission assessing the penalty shall be under the substantial
2 evidence rule and shall be instituted by filing a petition with a
3 district court in Travis County, as provided by Section 19,
4 Administrative Procedure and Texas Register Act (Article 6252-13a,
5 Vernon's Texas Civil Statutes).

6 (n) A penalty collected under this section shall be
7 deposited in the state treasury to the credit of the general
8 revenue fund.

9 (o) Notwithstanding any other provision to the contrary, the
10 commission may compromise, modify, or remit, with or without
11 condition, any civil penalty imposed under this section.

12 (p) Payment of an administrative penalty under this section
13 shall be full and complete satisfaction of the violation for which
14 the administrative penalty is assessed and shall preclude any other
15 civil or criminal penalty for the same violation.

16 SECTION 3. This Act takes effect September 1, 1987.

17 SECTION 4. The importance of this legislation and the
18 crowded condition of the calendars in both houses create an
19 emergency and an imperative public necessity that the
20 constitutional rule requiring bills to be read on three several
21 days in each house be suspended, and this rule is hereby suspended.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 31, 1987

TO: Honorable Terral Smith, Chair
Committee on Natural Resources
House of Representatives
Austin, Texas

In Re: House Bill No. 1789
By: Craddick, Harris

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1789 (relating to the cancellation of water rights permits, certified filings, and certificates of adjudication) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: Water Commission;
LBB Staff: JO, HES, JWH, JG, LV

H. B. No. 1789

By Caddell
J. Harris

A BILL TO BE ENTITLED
AN ACT

relating to the cancellation of water rights permits, certified filings, and certificates of adjudication.

MAR 12 1987

1. Filed with the Chief Clerk.

MAR 19 1987

2. Read first time and Referred to Committee on

Natural Resources

APR 27 1987

3. Reported favorably (~~as amended~~) (as substituted) and sent to Printer at 4:24 pm

APR 30 1987

MAY 4 1987

4. Printed and distributed at 1:15 pm

MAY 4 1987

5. Sent to Committee on Calendars at 2:56 pm

MAY 26 1987

6. Read second time (~~amended~~) passed to third reading (~~failed~~) by (~~Record Vote of~~) as sub- (Non-Record Vote) present, not voting

7. Motion to reconsider and table the vote by which H.B. _____ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ years, _____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ years, _____ nays, and _____ present, not voting.

MAY 29 1987

9. Read third time (~~amended~~); finally passed (~~failed~~) by (Non-Record Vote) (~~Record Vote of _____ years, _____ nays, _____ present, not voting~~)

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ years, _____ nays, and _____ present, not voting).

MAY 29 1987

12. Ordered Engrossed at 10:59 pm

MAY 30 1987

13. Engrossed.

MAY 30 1987

14. Returned to Chief Clerk at 12:20 am

MAY 30 1987

15. Sent to Senate.

Betty Murray
Chief Clerk of the House

MAY 30 1987

16. Received from the House

17. Read, referred to Committee on _____

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

21. Regular order of business suspended by (a viva voce vote.) _____ years, _____ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION:

OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments)
(Substitute) by a (Non-Record
Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____

1987 MAY 30 AM 12:20

HOUSE OF REPRESENTATIVES

HOUSE OF REPRESENTATIVES
1987 MAY -4 PM 1:15 1987 MAY 27 AM 3:31

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